

Grocers Association (Texas); Health Advocacy Services (California); Independent Cosmetic Manufacturers & Distributors, Inc.; Indiana Manufacturers Association; Indiana Retail Council; Industry and Commerce Association of South Dakota; Interamerican College of Physicians and Surgeons; Iowa Retail Federal, Inc.; and Maryland Association of Chain Drug Stores.

Maryland Retailers Association; Medical Society of the State of New York; Medical Society of Virginia; Michigan Chamber of Commerce; Michigan Distributors and Vendors Association, Inc.; Michigan State Medical Society; Minnesota Chamber of Commerce; Minnesota Grocers Association; Minnesota Retail Merchants Association; Mississippi Wholesale Distributors Association; Missouri Grocers Association; Missouri Retailers Association; Missouri State Medical Association; National Association of Chain Drug Stores; and National Association of Manufacturers.

National Coalition of Hispanic Health and Human Services; National Community Pharmacists Association; National Consumers League; National Council on the Aging; National Hispanic Council on Aging; National Retail Federation; National Wholesale Druggists' Association; New Hampshire Medical Society; New Mexico Pharmaceutical Association; Nonprescription Drug Manufacturers Association; North Carolina Retail Merchants Association; Ohio Council of Retail Merchants; Ohio Grocers Association; Ohio Wholesale Druggists Association; and Pennsylvania Association of Chain Drug Stores, Inc.

Philadelphia Association of Retail Druggists; Philadelphia College of Pharmacy; Retail Merchants Association of New Hampshire; Retailers Association of Massachusetts; Robbie Vierra-Lambert Spinal Cord Organization for Regaining Excellence; Safety & Health Council of New Hampshire; Safeway, Inc.; Senior Medication Awareness & Training Coalition; Sickle Cell Disease Association of America, Inc.; South Dakota Pharmacists Association; Tennessee Association of Business; Tennessee Grocers Association; Texas Association of Business & Chambers of Commerce; Texas Food Industry Association; and The 60 Plus Association.

United Seniors Association; United Seniors Health Cooperative; United States Hispanic Chamber of Commerce; Ukrop's; Vermont Board of Pharmacy; Vermont Chamber of Commerce; Vermont Grocers Association; Vermont Medical Society; Virginia Chamber of Commerce; Virginia Manufacturers Association; Virginia Pharmacists Association; Virginia Retail Merchants Association; Washington Retailers Association's Retail Pharmacy Council; Washington State Medical Association; White House Conference on Small Business, New Jersey Delegation; Wisconsin Grocers Association, Inc.; and Wisconsin Manufacturers and Commerce.

FORMER FDA COMMISSIONERS SUPPORTING NATIONAL UNIFORMITY

Charles C. Edwards, M.D.; Arthur Hull Hayes, Jr., M.D.; Donald Kennedy, Ph.D.; and Herbert Ley, Jr., M.D.

Mr. JEFFORDS. Madam President, we are nearing the end of the debate. I have no more requests for time that I am aware of. So I will make some comments and then go into a quorum call. But I want to alert Senators that if I do not have a request within the next 10 minutes, it is my intention to yield back the remainder of my time, assuming the minority would do the same thing, so that we can expedite the process and the movement of legislation through the Senate.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JEFFORDS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Madam President, I yield 6 minutes to the Senator from Arkansas.

CONSTITUTIONALITY OF MINING AMENDMENT

Mr. BUMPERS. Madam President, I rise today because I believe the Senate set a terrible precedent last Thursday when it voted to uphold a point of order that was made against an amendment that Senator GREGG and I offered to H.R. 2107, the Interior appropriations bill. This amendment proposed to collect the royalty from hardrock mining operations on public land and a reclamation fee from hardrock mining operations on land that was patented pursuant to the 1872 mining law. The receipts collected from the royalty and reclamation fee would have been deposited in a trust fund to be used to reclaim abandoned hardrock mines in the West.

Opponents of my amendment, in an attempt to prevent Senators from going on record in support of an effort to make the mining industry help pay for the environmental disasters it has created, raised a point of order arguing that the reclamation fee constituted a tax proposed by the Senate and thus the amendment violated the origination clause of the Constitution; that is, that all revenue measures must originate in the House. Unfortunately, the Senate voted to uphold the point of order even though the amendment was not even close to being unconstitutional.

The Supreme Court has held on numerous occasions that while a tax provision may not originate in the Senate, a governmental fee can. "A statute that creates a particular governmental program and that raises revenue to support that program, as opposed to a statute that raises revenue to support government generally, it is not a 'bill for raising revenue' within the meaning of the origination clause." That is confirmed in *United States versus Munoz-Florez*. My amendment would have imposed a royalty and a fee in order to directly fund the reclamation of abandoned hardrock mines. It was not intended to raise revenues for the Treasury.

In fact, Madam President, the Parliamentarian has already ruled that the reclamation fee provision does not constitute a tax when the Parliamentarian referred S. 326, which includes the very same reclamation fee proposal that I had, to the Senate Energy and Natural Resources Committee rather than the

Finance Committee. The House Parliamentarian made the very same ruling when he referred the House companion to S. 326 to the House Natural Resources Committee rather than the Ways and Means Committee.

I find it perplexing that anybody could argue that the amendment that Senator GREGG and I offered to the Interior appropriations bill could possibly constitute a tax. However, even if that were the case, it ought to be noted that the Interior appropriations bill originated in the House of Representatives in accordance with the origination clause of the Constitution. It does not matter that the amendment was offered in the Senate as long as the bill originated in the House. In *Flint v. Stone Tracy Company*, 220 U.S. 107 (1911), the Supreme Court ruled that legislation which created the tax on corporations complied with the origination clause even though the corporate tax was proposed by the Senate as a substitute to an inheritance tax that was included in the bill as reported by the House.

The fact that H.R. 2107 was reported by the Appropriations Committee rather than the Finance Committee is not relevant. The Senate has in the past added an amendment which modified the Tax Code to an appropriations bill. For example, in 1982 the Senate added a provision to the supplemental appropriations bill which limited the availability of certain tax deductions for Members of Congress.

Madam President, Senate rules do not permit the Parliamentarian to rule when a point of order is made against an amendment on constitutional grounds. If the Parliamentarian had been able to rule, the point of order would not have even been made and the decision would not have been close. Instead, the point of order was made with the knowledge that Senators would be able to defeat the Bumpers-Gregg amendment without actually going on record in support of allowing mining companies to continue acquiring billions of dollars worth of minerals from the taxpayers of this country without compensation and leaving those same taxpayers with environmental disasters to clean up.

Mr. President, I yield the floor.

Mr. JEFFORDS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DEWINE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNTABILITY ACT OF 1997

The Senate continued with the consideration of the bill.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. How much time remains, Mr. President?